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# Contracts: The War against Words: When Contract Interpretation Impedes Judicial Goals—Lee v. Fresenius Medical Care, Inc

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**CONTRACTS: THE WAR AGAINST WORDS: WHEN  
CONTRACT INTERPRETATION IMPEDES JUDICIAL  
GOALS—*LEE V. FRESENIUS MEDICAL CARE, INC.***

Jayce R. Lesniewski<sup>†</sup>

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“Words, as is well known, are the great foes of reality.”<sup>1</sup>

## I. INTRODUCTION

It is a common urge among people, lawyers and laypersons alike, to demand that any agreement or contract be put in writing. A part of that desire amongst the populace is the unfounded idea that oral agreements are unenforceable.<sup>2</sup> A more significant aspect, however, is the desire to protect oneself from misrepresentations of the other party and to have the terms of the agreement visible and recorded for posterity.<sup>3</sup> Written contracts are more desirable than oral agreements because they protect against mistaken parties and they make it easier for a court to determine the intent of the parties during a dispute.<sup>4</sup>

When interpreting a contract, the court must apply various accepted common law interpretation devices.<sup>5</sup> A court first looks at the plain meaning of the language.<sup>6</sup> If the plain meaning of the terms is unambiguous, then the court holds parties to those terms so long as there are no absurd results.<sup>7</sup> If there are any ambiguities, then the court can either look at extrinsic evidence,

1. JOSEPH CONRAD, UNDER WESTERN EYES 3 (Harper & Brothers Publishers 1911) (1911), available at <http://books.google.com/books?id=8P99Y2HWGK4C&printsec=frontcover&dq=Under+Western+Eyes#PPA3,M1>.

2. See *McArdle v. Williams*, 193 Minn. 433, 438, 258 N.W. 818, 820 (1935) (noting that contracts are made orally and also by the conduct of the parties). A contract is enforceable “whether it is expressed (1) in writing, (2) orally, (3) in acts, or (4), partly in one of these ways and partly in others.” *Id.* (citing RESTATEMENT (FIRST) OF CONTRACTS § 21 (1932)); cf. *Dusenka v. Dusenka*, 221 Minn. 234, 238, 21 N.W.2d 528, 530 (1946) (determining that agreements without clear intent, such as was present in *McArdle v. Williams*, are enforceable only as judicially created quasi-contracts and are not really contracts at all).

3. See *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 194 (Minn. Ct. App. 1985). “We could find that reliance on an oral representation was unjustifiable as a matter of law *only* if the written contract provision explicitly stated a fact completely contradictory to the claimed misrepresentation.” *Id.* (emphasis added).

4. See *Benson v. Markoe*, 37 Minn. 30, 35, 33 N.W. 38, 40 (1887) (holding that a court in equity will exercise its jurisdiction over a mistake of law where “only very clear and convincing proofs will be sufficient to overcome the presumption that the written instruments which parties have executed for the purpose of evidencing and carrying into effect their agreements are in legal effect or in terms contrary to their intention”).

5. See *infra* Part VI.

6. See *infra* Part VI.A.

7. See *infra* Part VI.

or, if none is available, resolve the ambiguity against the drafting party.<sup>8</sup>

*Lee v. Fresenius Medical Care, Inc.* is a case that revolves entirely around these issues of contract interpretation.<sup>9</sup> Vacation pay has developed in Minnesota to be purely a contractual obligation.<sup>10</sup> The language of the contract must be interpreted according to the basic precepts of contract interpretation.<sup>11</sup> This case note will outline those devices of interpretation and apply them to the *Lee* case.<sup>12</sup> In *Lee*, the Minnesota Supreme Court failed to properly interpret the employment contract because of its desire to protect business interests.<sup>13</sup> The supreme court could have interpreted the contract to find that Lee had a right to Paid Time Off (PTO), without creating a substantive right to vacation pay.<sup>14</sup> The Minnesota Supreme Court could have used other remedies in this case, such as equitable estoppel and disproportionate forfeiture, to arrive at a different and more equitable outcome.<sup>15</sup>

This note begins with an examination of how courts in Minnesota have created the contractual nature of vacation pay and how other jurisdictions treat vacation pay contracts.<sup>16</sup> It then details the *Lee* case and outlines the majority decision.<sup>17</sup> The proper common law contractual interpretation devices are then detailed and applied to the *Lee* case.<sup>18</sup> Then, it analyzes the *Lee* majority's failure to use basic contract interpretation methods.<sup>19</sup> Other possible outcomes are outlined,<sup>20</sup> and the note concludes that the Minnesota Supreme Court failed to truly uphold the contractual nature of vacation pay and provides a windfall for employers at employees' expense.<sup>21</sup>

8. See *infra* Part VI.B.

9. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117 (Minn. 2007).

10. See *infra* Part III.

11. See *infra* Part VI.A.

12. See *infra* Part VI.

13. See *infra* Part V.

14. See *infra* Part VIII.

15. See *infra* Part VIII.A–B.

16. See *infra* Part III.

17. See *infra* Parts IV, V.

18. See *infra* Part VI.

19. See *infra* Part VII.

20. See *infra* Part VIII.

21. See *infra* Part IX.

## II. THE IMPORTANCE OF WORDS TO CONTRACTS

The relationship between words and contracts is exceptionally close-knit. It is through words that one discovers the intent of a contract.<sup>22</sup> When a writing is the “complete and exclusive statement of the terms of an agreement,”<sup>23</sup> the courts can only look to the words of the document to effectuate the intent and to fulfill the purpose of the agreement.<sup>24</sup> The words, then, are the most significant and important means by which a party can express its intent to a court and to the other party involved.

The Minnesota legislature has recognized the importance of words to a contract.<sup>25</sup> The Minnesota Plain Language Contract Act requires that all consumer contracts “be written in a clear and coherent manner using words with common and everyday meanings.”<sup>26</sup> Although this statute applies only to consumer contracts, the intent of the legislature is clear. It intends to protect unwary consumers from being forced into unfortunate and possibly inequitable contract terms due to inherent vagueness or

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22. See RESTATEMENT (SECOND) OF CONTRACTS § 203(a) (1981) (stating that a court must give “reasonable, lawful, and effective meaning to all the terms” when interpreting a contract). See also *Dayton Park Props., L.L.P. v. Pac. Life Ins. Co.*, 370 F. Supp. 2d 869, 871 (D. Minn. 2005) (citing *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. Ct. App. 2003) (holding that intent of the contract as expressed within the “four corners of the instrument” is controlling)).

23. RESTATEMENT (SECOND) OF CONTRACTS § 210(1) (1981). This type of written contract is assumed to contain all the terms of an agreement and so the meaning of the words used determines the interpretation of that contract. See RESTATEMENT (SECOND) OF CONTRACTS § 209 cmt. a (1981).

24. *Drainage Dist. No. 1 v. Rude*, 21 F.2d 257, 261 (8th Cir. 1927) (stating that “courts of law must enforce written contracts according to the language used by the contracting parties” provided that the interpretation is rational and doesn’t defeat the purpose of the contract). See, e.g., *Metro Office Parks v. Control Data Corp.*, 295 Minn. 348, 353, 205 N.W.2d 121, 124 (1973) (holding that a party must provide “clear and convincing evidence that a mistake has been made” to vary the intent manifested in the contract); *W. Nat’l Mut. Ins. Co. v. Minn. Workers’ Comp. Insurers Ass’n, Inc.*, No. C5-98-1244, 1999 Minn. App. LEXIS 148, at \*5-6 (Minn. Ct. App. Feb. 16, 1999) (stating that the “primary purpose in construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the entire contract”).

25. See MINN. STAT. § 325G.31 (2006). This statute was originally passed in 1981, was effective in 1983, and has not been amended since. See Plain Language Contract Act, 1981 Minn. Laws 1245-46, ch. 274 § 3 (effective July 1, 1983).

26. MINN. STAT. § 325G.31 (2006). This statute does not apply in the case of an employment contract and is merely included to deduce the legislative ideas concerning the readability of contract terms.

unwarranted sophistication.<sup>27</sup>

Although oral contracts are generally enforceable in Minnesota,<sup>28</sup> a written contract is preferred because it is a formality that makes it clear what duties are required and what obligations and services must be rendered.<sup>29</sup> Some agreements are considered to be too important to even be considered enforceable without a writing and, as such, a writing is required by statute.<sup>30</sup> A written contract is considered to be the best way to guard against spurious claims.<sup>31</sup> There is a great responsibility on the drafting party, if it desires courts to understand and abide by its intent, to use words that are unambiguous and have a plain and ordinary meaning.<sup>32</sup> Without this, courts would be blind in their contractual determinations. Courts have devised various techniques aimed at ascertaining the intent and meaning of the contract from the words contained within it.<sup>33</sup> This is the task of contract interpretation.

For the vacation pay at dispute in *Lee v. Fresenius Medical Care, Inc.* to be subject to contract interpretation, it must first be determined that vacation pay is a contractual obligation.<sup>34</sup> If vacation pay is a contractual option, then any terms regarding vacation pay must be subject to the basic common law

27. See *Anderson v. McOskar Enters., Inc.*, 712 N.W.2d 796, 800 (Minn. Ct. App. 2006). Although this case does not comment explicitly on the legislative intent behind Minnesota Statutes section 325G.31, it does state that ambiguous contract terms must be strictly construed against the benefitted party and a court must determine if the contract terms contravene public policy before it can enforce the contract. See *id.* This indicates an understanding that a party must be protected against language that may be difficult to comprehend because that party may be subject to inequitable contract terms. See *id.*

28. *Mages v. Johanns*, 431 F.3d 1132, 1141 (8th Cir. 2005) (citing *McArdle v. Williams*, 193 Minn. 433, 258 N.W. 818, 820 (1935)).

29. See Eric A. Posner, *The Parol Evidence Rule, The Plain Meaning Rule, and the Principles of Contractual Interpretation*, 146 U. PA. L. REV. 533, 540 (1998).

30. See *Schwinn v. Griffith*, 303 N.W.2d 258, 260 (Minn. 1981). See also *Hagelin v. Wacks*, 61 Minn. 214, 216, 63 N.W. 624, 625 (1895). The current statute of frauds in Minnesota requires a writing for agreements that are not to be performed within a year, that require the payment of another's debt, that are in consideration of marriage, and that require paying a debt that was discharged by bankruptcy. MINN. STAT. § 513.01 (2006). "The statute of frauds was enacted in the reign of Charles II, nearly 200 years since, and . . . has been adopted with a remarkable approach to unanimity, not only in England, but in this country." *Morin v. Martz*, 13 Minn. 191, 192 (1868).

31. MARVIN A. CHIRELSTEIN, *CONCEPTS AND CASE ANALYSIS IN THE LAW OF CONTRACTS* 14 (5th ed. 2006).

32. See cases cited *supra* note 24.

33. See *infra* Part VI.

34. 741 N.W.2d 117, 127–28 (Minn. 2007).

interpretation devices that are used in Minnesota.<sup>35</sup> The court must first determine if vacation pay is contractual or statutory, and then it must apply either contractual or statutory interpretation to the provisions in question.<sup>36</sup>

### III. THE CONTRACTUAL FOUNDATION FOR VACATION PAY

Minnesota courts have been grappling with the issue of vacation pay for many years. An employee of the Duluth, Missabe and Iron Range Railway Company brought about the first significant case involving vacation pay because he felt he was wrongfully discharged under a collective bargaining agreement.<sup>37</sup> That agreement included a provision in which an employee was eligible for vacation pay after fulfilling certain requirements.<sup>38</sup> The court held that, under the contract, termination from employment also terminated eligibility for vacation pay.<sup>39</sup> The court used the contract almost exclusively to decide the eligibility for vacation pay, which grounded the issue firmly in the realm of contracts.<sup>40</sup>

In 1956, the court furthered the contractual nature of vacation pay.<sup>41</sup> In *Tynan v. KSTP, Inc.*, there was an employment contract between the plaintiff and his employer that determined eligibility for vacation pay.<sup>42</sup> The court debated the existence of the contract because of a strike and the expiration of a collective bargaining agreement.<sup>43</sup> Ultimately, the court found the agreement to be a valid contract.<sup>44</sup> The court held that the employee earned the right to those vacation benefits because he fulfilled all eligibility

35. See *infra* Part VI.

36. See *Lee*, 741 N.W.2d at 124–29.

37. *Edelstein v. Duluth, Missabe & Iron Range Ry. Co.*, 225 Minn. 508, 31 N.W.2d 465 (1948).

38. *Id.* at 524, 31 N.W.2d at 474. To be eligible for vacation pay, an employee was required to work for at least 160 days and still be employed at the time of the vacation pay request. *Id.* at 516, 31 N.W.2d at 470.

39. *Id.* at 524, 31 N.W.2d at 474.

40. See *id.* at 522, 31 N.W.2d at 473.

41. See *Tynan v. KSTP, Inc.*, 247 Minn. 168, 177, 178, 77 N.W.2d 200, 206 (1956). The court refers to the *Edelstein* decision and other cases such as *Marranzano v. Riggs Nat'l Bank*, 184 F.2d 349 (D.C. Cir. 1950) and *Dusenka v. Dusenka*, 221 Minn. 234, 21 N.W.2d 528 (1946). *Tynan*, 247 Minn. at 177–78, 77 N.W.2d at 206.

42. *Id.* at 179, 77 N.W.2d at 207. The contract stated that an employee was eligible for fourteen days of vacation after working for at least six months and twenty-one days of vacation after working for at least one year. *Id.*

43. *Id.*

44. *Id.*

requirements and that right was, in legal effect, choate.<sup>45</sup>

In *Brown v. Tonka, Corp.*, the employee contract initially allowed for the payment of earned but unused vacation hours so long as the employment was ended in specific ways.<sup>46</sup> The contract was later modified to restrict the eligibility for vacation pay to only those employees who had worked the entire year and into the next year.<sup>47</sup> The court held that the employees were “terminated without cause” and, thus, were entitled to their pay.<sup>48</sup> The contract contained an express provision that enabled terminated employees to receive vacation pay, and the contract modification did not affect this rule.<sup>49</sup> Since vacation pay is purely contractual, the employers were bound by their contract.<sup>50</sup>

Minnesota is not the only state to have a continuing debate on vacation pay. It is generally determined across jurisdictions that vacation pay is not a gratuity but is considered wages or compensation for performance.<sup>51</sup> The difficulty, however, arises in determining when an employee’s right to payment for those wages vests.<sup>52</sup> Some state courts have held that conditions precedent to the vesting of a right to vacation pay can be expressly agreed to in the contract.<sup>53</sup> Other jurisdictions lean the other way and have

45. *Id.* This means that the right to the vacation pay is fully effective because it has “ripened or become perfected.” See BLACK’S LAW DICTIONARY 258 (8th ed. 2004).

46. 519 N.W.2d 474, 475 (Minn. Ct. App. 1994). The court stated that the termination must be of one of three types and emphasized the final condition: “1) resignation with notice of one week for office hourly and two weeks for salaried employees; 2) voluntary and medical-related separation; 3) *involuntary separation for other than cause.*” *Id.* (emphasis in original).

47. *Id.* at 476. The problem that arose in *Brown v. Tonka, Corp.* was that Hasbro, Inc. bought out the employer in May 1991, closed the employee’s plant, and terminated all employees on December 31, 1991. *Id.* The employees sought payment for their 1991 vacation benefits even though they were terminated before their work could extend into 1992. *Id.*

48. *Id.* at 478.

49. *Id.*

50. *See id.*

51. 19 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 54.35 (4th ed. 2001).

52. *See id.* *See also* Lee v. Fresenius Med. Care, Inc., 741 N.W.2d 117 (Minn. 2007).

53. *See, e.g.,* Sweet v. Stormont Vail Reg’l Med. Ctr., 647 P.2d 1274, 1281 (Kan. 1982) (holding that a two-week notice provision was a condition precedent to the vesting of a right to payment for unused vacation hours); Rowell v. Jones & Vining, Inc., 524 A.2d 1208, 1211 (Me. 1987) (deciding that a condition precedent on eligibility does not divest vacation pay because that pay was not earned until the condition was met).



found a more fundamental or substantive right to vacation pay.<sup>54</sup> Minnesota recently revisited the issue of vacation pay in the case of *Lee v. Fresenius Medical Care, Inc.*

#### IV. *LEE V. FRESENIUS MEDICAL CARE, INC.*

In December 1991, Susan Lee was hired as a dialysis patient care technician for Miller-Dwan Hospital in Duluth, Minnesota.<sup>55</sup> In September 2000, Fresenius Medical Care, Inc. (Fresenius) purchased the dialysis unit from Miller-Dwan.<sup>56</sup> Upon Lee's transition into the new company, she was issued a copy of the employee handbook, which detailed the company's vacation time or paid time off (PTO) policies.<sup>57</sup> The PTO provisions stated that employees "accrue PTO hours at a set rate per pay period . . . [and] begin to earn PTO upon hire. . . ."<sup>58</sup> Lee signed the employee handbook and continued working until her termination for misconduct on August 13, 2002<sup>59</sup> after having allegedly accrued 181.86 hours of PTO.<sup>60</sup> The employee handbook also provided for payment of earned but unused PTO hours upon resignation with proper notice, but did not allow for payment of those PTO hours upon resignation without proper notice or termination for

54. See, e.g., *Thompson v. Cheyenne Mountain Sch. Dist.* No. 12, 844 P.2d 1235, 1237 (Colo. App. 1992) (concluding that unless there is an unequivocal and unambiguous express contractual provision detailing when the right to vacation pay vests, the court should imply a right to compensation to avoid forfeiture). See also *Stall v. Prof'l Divers of New Orleans, Inc.*, 739 So. 2d 1005, 1007 (La. Ct. App. 1999) (holding that vacation pay is considered wages and under a mandatory payment statute the employer is required to pay regardless of contractual conditions).

55. *Lee*, 741 N.W.2d at 119.

56. *Id.*

57. *Id.* at 120. The court also stated that the terms "vacation time" and "paid time off" were used interchangeably within the employee handbook and the terms did not need to be distinguished. *Id.* at 120 n.1.

58. *Id.* at 120. The beginning PTO rate for new employees is 7.69 hours per pay period, and PTO must be requested by the employee and then approved by a supervisor. *Id.*

59. *Id.* Lee was terminated for misconduct after six separate safety violations ranging from failing to cover her mouth while coughing to offering a patient a bag of wild mushrooms. *Id.* at 120–21. Lee stated that her termination was based upon her alleged union activity, but the National Labor Relations Board found no merit to that claim. *Id.* at 121 n.2. She also failed to make this claim in her original lawsuit, so the court refused to decide the issue because it could not be raised on appeal. *Id.* at 130.

60. *Id.* at 121.

misconduct.<sup>61</sup>

After her termination, Fresenius paid Lee the hourly wages owed but not her unused PTO.<sup>62</sup> After approximately two years elapsed, Lee brought a claim in Saint Louis County Conciliation Court in order to recover payment for her unused PTO.<sup>63</sup> The conciliation court found for Lee in the amount of \$5,053.80.<sup>64</sup> Fresenius appealed the order and the court granted the appeal and removal to Saint Louis County District Court.<sup>65</sup> Both parties filed motions for summary judgment with the district court.<sup>66</sup> The court granted Fresenius' motion and denied Lee's on the grounds that Lee was not eligible for earned but unused vacation pay under Minnesota Statutes section 181.13(a).<sup>67</sup> She did not meet the contractual eligibility requirement of proper notice set forth in the employee handbook, and Fresenius was under no obligation to pay her.<sup>68</sup>

Lee promptly appealed her case to the Minnesota Court of Appeals, which reversed the district court, reasoning that PTO is the same as "wages" under the statute and Lee had accrued or earned those wages during her career.<sup>69</sup> Those wages were earned and unpaid upon her termination, and therefore, Fresenius was obligated to pay her under the statute.<sup>70</sup> Fresenius appealed the decision to the Minnesota Supreme Court, which then reversed the court of appeals and reinstated the district court's judgment.<sup>71</sup>

61. *Id.* at 120.

62. *Id.* at 121.

63. *Id.*

64. *Id.* The award included the value of Lee's PTO (\$3,011.60) as well as a penalty for Fresenius' failure to pay within 24 hours of Lee's demand. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 122. "When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee." MINN. STAT. § 181.13(a) (2006).

68. *Lee*, 741 N.W.2d at 122.

69. *Id.*

70. *Lee v. Fresenius Med. Care, Inc.*, 719 N.W.2d 222, 226 (Minn. Ct. App. 2006), *rev'd*, 741 N.W.2d 117 (2007). The court also held that even though an employer is only obligated to pay vacation wages under contract, any contract that would provide for the withholding of that pay is statutorily prohibited and thus an illegal contract. *See id.* at 225 (quoting *Winnetka Partners Ltd. P'ship v. County of Hennepin*, 538 N.W.2d 912, 914 (Minn. 1995)).

71. *Lee*, 741 N.W.2d at 130.

V. THE *LEE V. FRESNIUS MEDICAL CARE, INC.* MAJORITY'S REASONING

The Minnesota Supreme Court's reasoning revolves around a few central elements. The first is that Minnesota common law generally holds that there is no substantive right to vacation pay, only a contractual right.<sup>72</sup> The employee handbook that outlined the PTO benefits for Lee was a binding contract, but under the terms of that contract, Lee would only be entitled to those benefits if she resigned with proper notice.<sup>73</sup> Since Lee was terminated for misconduct, she was not entitled to payment for her unused PTO.<sup>74</sup>

The court also determined that, although common law in general, as well as Minnesota case law, has determined vacation pay to be part of an employee's wages,<sup>75</sup> vacation pay is not covered under the mandatory payment provisions of section 181.13(a).<sup>76</sup> The court held the statute is merely a timing provision determining when an employer must pay the employee's earned but unpaid wages.<sup>77</sup>

The court extended its analysis further to an interpretation of the contract in the employee handbook. It decided that, since a right to vacation pay is contractual, an employer can place any conditions upon that right that it finds necessary.<sup>78</sup> Although Lee earned the right to use her PTO during her career, the provision requiring resignation with notice was a condition precedent to the vesting of her right to payment of PTO as wages.<sup>79</sup> Lee did not fulfill this condition and therefore had no right to the PTO payments.<sup>80</sup> The court's decision allows an employment contract to place any conditions on earning PTO wages without violating the

72. *Id.* at 123; *see* Tynan v. KSTP, Inc., 247 Minn. 168, 177, 77 N.W.2d 200, 206 (1956); Brown v. Tonka, Corp., 519 N.W.2d 474, 477 (Minn. Ct. App. 1994).

73. *Lee*, 741 N.W.2d at 120.

74. *Id.* at 123–24.

75. *Id.* at 124 (citing Kohout v. Shakopee Foundry Co., 281 Minn. 401, 403–04, 162 N.W.2d 237, 238–39 (1968); 19 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 54.35 (4th ed. 2001)).

76. *Lee*, 741 N.W.2d at 125.

77. *Id.* The court interprets the statute as a timing provision determining when an employer must pay the employee's earned but unpaid wages, not what payment it mandates. *Id.* This interpretation is out of deference to the so-called legislative intent that there be no substantive right to vacation pay, and the desire to avoid creating a cause of action to challenge the nonpayment of wages apart from the criminal liability for employers under Minnesota Statutes section 181.74. *Id.* at 125–26.

78. *Id.* at 126.

79. *Id.* at 127.

80. *Id.*

payment provisions of section 181.13(a).<sup>81</sup> It follows that any employment contract that places a condition on the payment, rather than the earning of vacation pay, would allow for a divestiture of earned wages and would violate the statute.<sup>82</sup>

## VI. DEVICES OF CONTRACT INTERPRETATION AND THEIR APPLICATION TO *LEE V. FRESENIUS MEDICAL CARE, INC.*

### A. *Plain and Ordinary Meaning Rule*

The initial contract interpretation device is the plain and ordinary meaning rule. Language within a contract must be given its plain and ordinary meaning.<sup>83</sup> The Minnesota Supreme Court has also defined plain and ordinary meaning to be the “usual and accepted meaning” or the “plain, ordinary, and popular” meaning.<sup>84</sup> If the “contract is unambiguous, then the language must be given its plain and ordinary meaning and will be enforced even if the results are harsh.”<sup>85</sup> If words are clear and the meaning is easily discernable, then the court should end its interpretation because “there is no room for construction.”<sup>86</sup>

Determining the plain meaning of words is more difficult on

81. *See id.* at 128.

82. *Id.* at 134 (Page, J., dissenting). This is pointed out by the dissent in its analysis that the plain meaning of the employment contract indicated that there were no conditions placed upon earning PTO, but that the conditions in the contract were placed upon the payment of PTO and thus were invalid. *Id.*

83. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998) (citing *Employers Mut. Liab. Ins. Co. v. Eagles Lodge*, 282 Minn. 477, 479, 165 N.W.2d 554, 556 (1969)). “In interpreting a contract, the language is to be given its plain and ordinary meaning.” *Id.* This holds true in other jurisdictions as well. *See, e.g., Office of Labor Relations v. New England Health Care Employees Union*, Dist. 1199, AFL-CIO, 951 A.2d 1249, 1254 (Conn. 2008) (discussing a more liberal approach allowing “[a] fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract”); *Jacobson v. DP Partners Ltd. P’ship*, 245 S.W.3d 102, 106 (Tex. App. 2008) (discussing a stricter approach requiring that “[t]he parties’ intent must be taken from the agreement itself and the agreement must be enforced as written”).

84. *Bobich v. Oja*, 258 Minn. 287, 294, 104 N.W.2d 19, 24 (1960); *see Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008) (quoting *Canadian Universal Ins. Co. v. Fire Watch, Inc.*, 258 N.W.2d 570, 572 (Minn. 1977)).

85. *Bank Midwest, Minn., Iowa, N.A. v. Lipetzky*, 674 N.W.2d 176, 179 (Minn. 2004) (quoting *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346–47 (Minn. 2003)).

86. *Phil G. Ruvelson, Inc. v. St. Paul Fire & Marine Ins. Co.*, 235 Minn. 243, 254, 50 N.W.2d 629, 635 (1951).

its face than it appears due to the very nature of words and their meanings. The meaning of words can be difficult to grasp because “a word is a symbol of thought but has no arbitrary and fixed meaning. . . .”<sup>87</sup> Meaning is merely the mental word that a written word represents.<sup>88</sup> Courts recently, particularly regarding contracts, have tried to avoid any foray into the mental realm.<sup>89</sup> The task then becomes to determine the meaning of the language that a reasonable person would place on it.<sup>90</sup> “Courts frequently look to dictionaries and case law when determining the ‘plain and ordinary’ meaning of a contract term.”<sup>91</sup> This is certainly the most reasonable manner in which to determine the plain, ordinary, and

87. *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 644 (Cal. 1968) (quoting *Pearson v. State Soc. Welfare Bd.*, 353 P.2d 33, 39 (Cal. 1960)). Chief Justice Traynor, in his decision for the California Supreme Court, also held that the words used in the contract are what courts must draw on to determine and give effect to parties’ contractual intent. *Pac. Gas & Elec. Co.*, 442 P.2d at 644. Although this case comes from California, it has been cited and used in Minnesota. See, e.g., *Anderson v. Kammeier*, 262 N.W.2d 366, 371 n.2 (Minn. 1977) (citing as an example of courts expanding the use of parol evidence in contract interpretation); *Am. Mach. & Tool Co. v. Strite-Anderson Mfg. Co.*, 353 N.W.2d 592, 597 (Minn. Ct. App. 1984) (discussing the admissibility of evidence to prove a meaning of contract language).

88. Michael Devitt, *Meaning and Use*, 65 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH 106, 110 (2002). The study of semantics is greatly beyond the scope of this case note, but the aforementioned article is an excellent resource regarding the analysis of various linguistic meaning concepts. See *id.*

89. *TNT Props., Ltd. v. Tri-Star Developers L.L.C.*, 677 N.W.2d 94, 102 (Minn. Ct. App. 2004). This concept is called the “objective theory of contracts,” which the Minnesota courts have adopted. *Speckel by Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. Ct. App. 1985). Under this theory, outward manifestations of the party determine intent and no subjective or mental intent is considered. *Id.* Parties express their intent through the language of the contract so it would be a proper extension of the objective theory to avoid considering the mental meaning placed on the words by the drafter and only consider the outward manifestation of that meaning. See RESTATEMENT (SECOND) OF CONTRACTS § 203 (1981); 1 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 4.2 (4th ed. 2001); see also *Dayton Park Props., L.L.P. v. Pac. Life Ins. Co.*, 370 F. Supp. 2d 869, 871 (D. Minn. 2005); *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. Ct. App. 2003).

90. *Lucas v. Ganley Bros.*, 166 Minn. 7, 11, 206 N.W. 934, 936 (1926) (citing *Symonds v. Nw. Mut. Life Ins. Co.*, 23 Minn. 491, 502 (1877)).

91. *Ravich v. Datakey, Inc.*, No. A05-1496, 2006 WL 923722, at \*2 (Minn. Ct. App. Apr. 11, 2006) (citing *Bank Midwest v. Lipetzky*, 674 N.W.2d 176, 180 (Minn. 2004)); cf. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310–11 (Minn. 1989) (citing *Henning Nelson Const. Co. v. Fireman’s Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 652 (Minn. 1986) (stating that courts should not create ambiguities in contracts by using language in dictionaries to overcomplicate the plain reading of the terms)). A contract “must be construed as a whole, and unambiguous language must be given its plain and ordinary meaning.” *Id.*

popular meaning of the contractual language.<sup>92</sup>

The *Lee* case turns on the Court's interpretation of a single word, "earn."<sup>93</sup> The central questions then are what does the word "earn" mean and at what point is the right to payment for PTO hours "earned." Black's Law Dictionary defines the verb "earn" as "[t]o acquire by labor, service, or performance" or "[t]o do something that entitles one to a reward or result, whether it is received or not."<sup>94</sup> This definition is particularly telling for the *Lee* case. Lee acquired her PTO hours by her labor.<sup>95</sup> The contract provided that Lee would begin to earn her PTO hours upon hire, and therefore she should have begun to be entitled to them upon hire even if she never received them during her career.<sup>96</sup>

One can also look beyond the legal realm to try to determine the meaning of words. The Oxford English Dictionary is the standard for defining the English language. The most pertinent definition for the term "earn" is "to render an equivalent in labour or service for (wages); hence to obtain or deserve (money, praise, any advantage) as the reward of labour."<sup>97</sup> Lee rendered her equivalent in labor, 30 hours of work per week, and her reward was her wages, along with her accrual of 8.08 hours of PTO per pay period.<sup>98</sup>

These definitions would imply that Lee earned her PTO hours through her labor and thus, upon her termination, the PTO hours were earned but unused. Since PTO hours are considered wages, and since these wages were earned but unpaid at the time of termination, Fresenius should be obligated to pay Lee according to the statutory mandate.<sup>99</sup> This is the plain meaning of the word "earn" that is found in the employment contract at issue, and if this was the only term contained within, then interpretation would end here because there is clearly no ambiguity.<sup>100</sup>

92. See *Bobich v. Oja*, 258 Minn. 287, 294, 104 N.W.2d 19, 24 (1960).

93. See *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 127 (Minn. 2007).

94. BLACK'S LAW DICTIONARY 547 (8th ed. 2004).

95. See *Lee*, 741 N.W.2d at 120. "The Paid Time Off (PTO) program allows you [employee] to receive paid time off based on individual preferences and varying needs. . . . [A]ccrual depends on your length of service and number of hours worked. . . . [E]mployees begin to earn PTO upon hire . . . ." *Id.*

96. See *id.*

97. 5 THE OXFORD ENGLISH DICTIONARY 25 (2d ed. 1991).

98. *Lee*, 741 N.W.2d at 120.

99. See MINN. STAT. § 181.13(a) (2006); *Lee*, 741 N.W.2d at 132–33 (Page, J., dissenting).

100. See *Phil G. Ruvelson, Inc. v. St. Paul Fire & Marine Ins. Co.*, 235 Minn.

Inherent within the plain and ordinary meaning rule is the prohibition against absurd results.<sup>101</sup> A court, when giving meaning to certain terms of a contract, must protect the integrity of a contract by ensuring that all terms of the contract are taken in context.<sup>102</sup> If the plain meaning of one condition creates an absurdity, then that meaning must be subjugated to other terms that might lead to a more reasonable result.<sup>103</sup> The terms in the *Lee* contract that govern vacation pay provide for the unlimited accrual of PTO hours throughout the employment career and the right to use those hours at any time during employment upon request of the employee and upon authorization by a supervisor.<sup>104</sup> This appears to be a near absolute right to use and receive payment for PTO while employed.

There are additional terms, however, that state the right to use and receive payment for PTO ends upon termination for misconduct.<sup>105</sup> *Lee* was an at-will employee who could be terminated at any time and was terminated after six incidents that occurred between June 6, 2002 and August 6, 2002.<sup>106</sup> The absurdity that results from the aforementioned condition is that an employee can accrue an unlimited amount of PTO hours but must use those hours before being terminated for misconduct—which can occur at any time without the knowledge of the employee. This would either inhibit an employee from the contractually permitted accrual of any significant amount of PTO hours, or it would force the employee to use all of her PTO hours immediately before termination for misconduct. *Lee*'s first incident of misconduct occurred on June 6, 2002, and she was fired barely two months later.<sup>107</sup> This interpretation would require *Lee* to use her 181.86 hours<sup>108</sup> of accrued PTO immediately after her initial incident of misconduct for fear that she could be fired at any moment, without her knowledge, resulting in those hours being taken away from her. This is clearly an absurd result that must be

243, 254, 50 N.W.2d 629, 635 (1951).

101. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998) (citing *Employers Mut. Liab. Ins. Co. v. Eagles Lodge*, 282 Minn. 477, 479, 165 N.W.2d 554, 556 (1969)).

102. *Id.*

103. *See id.*

104. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 120 (Minn. 2007).

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 121.

prohibited under the plain meaning rule.<sup>109</sup>

*B. Interpretation of Ambiguous Terms*

An ambiguity inherently exists in the contract, as well. A contract term is ambiguous if the language is reasonably susceptible to more than one interpretation.<sup>110</sup> The ambiguity in the Lee contract arises in the condition to eligibility for payment.<sup>111</sup> The condition requires proper notice to be eligible for payment of earned but unused PTO.<sup>112</sup> The ambiguity that results is the definitive point at which the right to payment for earned but unused PTO wages vests with the employee. According to the terms of the contract, an employee has the right to use and be paid for PTO while employed, and it is only at the point of termination of the contract that the proper notice condition comes into play.<sup>113</sup>

There are two possible outcomes of these terms. The first is that the right to use and payment for PTO vests with the employee while employed, and then is divested from the employee upon termination without proper notice for failing to fulfill that condition. This outcome would clearly violate the statutory mandate because it would enable an employer to withhold earned but unpaid wages.<sup>114</sup> The second possibility is that the right to payment never fully vests with the employee and the employer has discretion to allow for the use and payment of PTO during employment and upon termination. This outcome would enable employers to withhold payment of PTO because the right to payment was not earned until the notice condition was met.<sup>115</sup>

How then should the court resolve this ambiguity? The first task is that one can attempt to interpret ambiguous terms by using extrinsic evidence to “make the court aware of the ‘surrounding circumstances’” and to allow the court to determine the meanings that the parties attached to the terms.<sup>116</sup> There does not appear to

109. See *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

110. *ICC Leasing Corp. v. Midwestern Mach. Co.*, 257 N.W.2d 551, 554 (Minn. 1977) (citing *Metro Office Parks Co. v. Control Data Corp.*, 295 Minn. 348, 205 N.W.2d 121 (1973)).

111. See *Lee*, 741 N.W.2d at 120.

112. *Id.*

113. *Id.*

114. See MINN. STAT. § 181.13(a) (2006).

115. *Lee*, 741 N.W.2d at 128. This is the view taken by the majority. *Id.*

116. 5 MARGARET N. KNIFFIN, CORBIN ON CONTRACTS § 24.7, at 31 (rev. ed.



be any such circumstances other than Lee signing the employee handbook upon the initiation of employment with Fresenius.<sup>117</sup>

Since an ambiguity exists within the contract and no extrinsic evidence explains the meaning that each party attached to the terms, the next step of contract interpretation would be interpretation *contra proferentem*.<sup>118</sup> This interpretation requires that an ambiguous term must be construed against the drafter.<sup>119</sup> This doctrine holds especially true for contracts in which the drafter controls all the terms and offers the contract on a take-it-or-leave-it basis.<sup>120</sup> “[W]here a contract is open to two interpretations, the one more favorable to the party who did not draft the instrument should be adopted in the absence of a clear showing that a contrary meaning was intended by the parties at the time of its execution.”<sup>121</sup>

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2008) (quoting *Alyeska Pipeline Serv. v. O’Kelley*, 645 P.2d 767, 771 (Alaska 1982)). This would require a discussion of the parol evidence rule, which excludes evidence of prior or contemporaneous agreements that would vary the terms of a written and fully integrated contract. See *BALLENTINE’S LAW DICTIONARY* 914 (3d ed. 1969); *Borgersen v. Cardiovascular Sys.*, 729 N.W.2d 619, 625 (Minn. Ct. App. 2007).

117. See *Lee*, 741 N.W.2d at 119–21.

118. *KNIFFIN*, *supra* note 116, § 24.27, at 282–83.

119. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002) (citing *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995)); *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979); *RESTATEMENT (SECOND) OF CONTRACTS* § 206 (1981); see also *Deutz & Crow Co., Inc. v. Anderson*, 354 N.W.2d 482, 486–87 (Minn. Ct. App. 1984); *Grandnorthern, Inc. v. West Mall P’ship*, 359 N.W.2d 41, 45 (Minn. Ct. App. 1984). The policy keeps the parties on a level playing field because the drafter often has greater bargaining power to determine which terms are included and which are not. The party will be more likely to protect its own interests at the expense of the other party. See *RESTATEMENT (SECOND) OF CONTRACTS* § 206 cmt. a (1981).

120. *Atwater Creamery Co. v. Western Nat’l Mut. Ins. Co.*, 366 N.W.2d 271, 277 (Minn. 1985) (citing Robert E. Keeton, *Insurance Law Rights at Variance with Policy Provisions*, 83 HARV. L. REV. 961 (1970)); see also *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 924 (Minn. 1982). Adhesion contracts are generally unenforceable as a matter of public policy because it is imposed on a “take-it-or-leave-it” basis by a party with greater bargaining power without opportunity for negotiation for services that could not be obtained elsewhere. *Anderson v. McOskar Enters., Inc.*, 712 N.W.2d 796, 800 (Minn. Ct. App. 2006) (quoting *Schlobohm*, 326 N.W.2d at 924–25). It could be argued that Fresenius’ employee handbook in this case was an adhesion contract because it was imposed on Lee by a new employer that had a greater bargaining position, there was no opportunity for negotiation, and Lee was required to sign it or lose her job. See *Lee*, 741 N.W.2d at 120; accord *Schlobohm*, 326 N.W.2d at 924–25, and *Anderson*, 712 N.W.2d at 800. To hold this contract unenforceable, however, would greatly inhibit the ability of an employer to impose its own standards and rules on employees of a recently acquired company.

121. *Ecolab, Inc. v. Gartland*, 537 N.W.2d 291, 295 (Minn. Ct. App. 1995) (quoting *Wick v. Murphy*, 237 Minn. 447, 453, 54 N.W.2d 805, 809 (1952)).

Since the intention of the parties is determined by the words in the contract, the language set forth in the contract should be the determining factor in defining ambiguous terms.<sup>122</sup> One reading would allow an employee to recover earned but unused wages in the form of vacation pay upon termination, and the other would allow an employer to withhold those wages pending the completion of various contractual provisions.<sup>123</sup> The interpretation of ambiguous terms, in lieu of any extrinsic evidence to the contrary, must be the more favorable interpretation to the party who did not draft the contract.<sup>124</sup> Under this interpretation, it would be necessary to find that Lee is entitled to payment for her earned but unused PTO and that Fresenius is required to pay pursuant to statutory mandate.<sup>125</sup>

*C. Questions of Law and Questions of Fact*

An ambiguity clearly exists in the contract's language.<sup>126</sup> The plain meaning analysis of the contract terms indicates that an employee earns the right to use and be paid for vacation time during employment, but the right to payment for those earned but unused wages is conditioned upon resignation with notice.<sup>127</sup> Therefore, there is ambiguity as to exactly when during employment the ultimate right to payment for earned but unused vacation time vests.<sup>128</sup> This ambiguity must be settled before it can be determined if the condition divesting an employee of earned but unused vacation pay violates statutory payment mandates.<sup>129</sup>

Any finding of ambiguity within a contract is a question of law,<sup>130</sup> but any determination of the meaning of ambiguous

122. See *ICC Leasing Corp. v. Midwestern Mach. Co.*, 257 N.W.2d 551, 554 (Minn. 1977).

123. See *Lee*, 741 N.W.2d at 120. The condition in question specifically refers to PTO upon termination as "earned but unused" and it also states that, upon termination for misconduct, the employer can withhold earned but unused PTO "unless required by state law." *Id.*

124. See *Ecolab*, 571 N.W.2d at 295; see also *Hilligoss*, 649 N.W.2d at 148; RESTATEMENT (SECOND) OF CONTRACTS § 206 (1981).

125. See *Lee*, 741 N.W.2d at 131 (Page, J., dissenting); accord *Ecolab*, 571 N.W.2d at 295.

126. See *supra* Part VI.B.

127. See *Lee*, 741 N.W.2d at 120.

128. See *supra* text accompanying note 112.

129. See *Lee*, 741 N.W.2d at 125.

130. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003) (citing *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515

contract terms is a question of fact for a jury.<sup>131</sup> A reasonable court could find that this contract language is ambiguous. There have been no factual findings regarding the ambiguities in the contract because the district court dismissed Lee's claim by granting Fresenius' motion for summary judgment.<sup>132</sup> Since there is a question as to ambiguity, this must be presented to the jury to determine the meaning of the ambiguous terms.<sup>133</sup> The Minnesota Supreme Court reviewed the appeal from the Minnesota Court of Appeals that overturned the motion for summary judgment,<sup>134</sup> and in doing so should have at least remanded the factual issue of the ambiguous terms to the district court for a jury determination.<sup>135</sup>

#### VII. THE FAILURE OF THE MAJORITY IN *LEE V. FRESENIUS MEDICAL CARE, INC.* TO PROPERLY INTERPRET THE CONTRACT

In *Lee*, the Minnesota Supreme Court failed to interpret the contractual provisions regarding vacation pay within the confines of accepted common law contract interpretation. Instead, the majority glossed over the plain meaning of the terms of the contract in order to fulfill its goals. Had the court followed a plain meaning analysis, it would have come to a different result. As stated earlier, the plain meaning of the word "earn" indicates that an employee's right to whatever is being earned vests as soon as

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(Minn. 1997)); *but see* *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004) (stating that contract interpretation is a question of law that must be reviewed de novo). The court cites *Employers Mut. Cas. Co. v. A.C.C.T., Inc.*, 580 N.W.2d 490, 493 (Minn. 1998) as its main support for this proposition. *Travertine*, 683 N.W.2d at 271. The actual holding in *Employers* seems to indicate that de novo review of contract interpretation can occur only when there are no genuine issues of material fact to consider. *See* 580 N.W.2d at 493.

131. *Denelsbeck*, 666 N.W.2d at 346 (citing *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1997)). Since the ambiguity of contract terms is a factual question for a jury, then a de novo review of the contract interpretation of the lower courts cannot occur until the fact issue is determined. *See supra* note 103.

132. *Lee*, 741 N.W.2d at 121. A motion for summary judgment is granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.03. On review, any evidence or possible factual issues must be viewed "in the light most favorable to the party against whom summary judgment was granted." *George v. Evenson*, 754 N.W.2d 335, 339 (Minn. 2008) (citing *State Farm Fire Cas. v. Aquila Inc.*, 718 N.W.2d 879, 883 (Minn. 2006)).

133. *See Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

134. *Lee*, 741 N.W.2d at 121.

135. *See supra* notes 115–16 and accompanying text.

that employee completes the required labor.<sup>136</sup> The majority would argue that this would most likely create a substantive right to vacation pay, which it is trying to avoid creating.<sup>137</sup>

The court did decide that earned but unpaid vacation pay is considered the same as earned but unpaid wages.<sup>138</sup> Therefore, it would hold that one could insert the word “wages” in the contractual provisions in place of “PTO.” The contract condition in question would then read “if your employment is terminated for misconduct, you will not be eligible for pay in lieu of notice or payment of earned but unused [*wages*].”<sup>139</sup> This is clearly a violation of the payment mandates of Minnesota Statutes section 181.13(a) under any reading of that statute.<sup>140</sup> The plain reading of the contract provisions in question clearly supported Lee’s right to payment for her earned but unused paid time off and the majority of the Minnesota Supreme Court was wrong in its interpretation holding that it does not.

The court was quite willing to avoid interpreting the contract through the accepted plain meaning device because it desperately wanted to avoid creating a substantive right to vacation pay. This desire to avoid the creation of a substantive right to vacation pay manifests itself significantly in the court’s reading of Minnesota Statutes section 181.13(a). The court decided that this statute only mandates “*when* an employer must pay a discharged employee” and not “*what* an employer must pay.”<sup>141</sup> The contract defined that Lee’s PTO hours were already earned, and the statute required that payment must take place within twenty-four hours of a demand.<sup>142</sup>

Instead, the majority decided it must “consider ‘the consequences of a particular interpretation.’”<sup>143</sup> By trying to avoid

136. See *supra* notes 93–99 and accompanying text.

137. See *Lee*, 741 N.W.2d at 125–26.

138. *Id.* at 124–25. “To the extent we have not spoken explicitly on this rule, we now conclude that paid time off or vacation pay constitutes wages for purposes of section 181.13(a).” *Id.* at 124–25. The court limited this definition of wages to apply only to Minnesota Statutes section 181.13(a) and not any other statute that involves wages. *Id.* at 125 n.3.

139. *Id.* at 120 (emphasis added).

140. See MINN. STAT. § 181.13(a) (2006). “When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee.” *Id.*

141. *Lee*, 741 N.W.2d at 125 (emphasis added).

142. MINN. STAT. § 181.13(a).

143. *Lee*, 741 N.W.2d at 129 (quoting MINN. STAT. § 645.16).

undesirable consequences, the court created its own meaning to the terms of the contract.<sup>144</sup> If the court had interpreted the contract properly, then it should allow the contractual conditions to “define *what* has been earned.”<sup>145</sup> At the very least, the terms of the contract are ambiguous enough to remand for a jury determination.<sup>146</sup> The court concluded that Lee was not even entitled to a remand for trial.<sup>147</sup>

If the right to vacation pay is “wholly contractual,”<sup>148</sup> then a provision outlining a vacation pay program must be subject to basic contract interpretation. The court appears to have had two significant goals in mind in its decision: to avoid the creation of a substantive right to vacation pay<sup>149</sup> and to protect the interests of employers.<sup>150</sup> By interpreting the contract in order to achieve those goals, the majority in turn limits the contractual nature of vacation pay provisions.

Had the court engaged in this basic exercise of contract interpretation, it would have come to a very different conclusion.<sup>151</sup> The contract states that an employee “accrues” PTO each pay period and “begin[s] to *earn* PTO upon hire.”<sup>152</sup> There are no other conditions set forth in the contract language on the earning of PTO.<sup>153</sup> The notice condition contains the specific language that it is a condition on who is “eligible to be *paid* for *earned but unused*

144. See *id.* at 126. The court reasons that although the contract states that an employee earns PTO during each pay period, this is not a right to a direct monetary payment and only a right to request time off. *Id.* The right to payment comes after termination and is subject to contractual conditions. *Id.*

145. *Id.*

146. See *supra* Part VI.C.

147. *Lee*, 741 N.W.2d at 130.

148. *Id.* at 126 (quoting *Tynan v. KSTP, Inc.*, 247 Minn. 168, 177, 77 N.W.2d 200, 206 (1956)).

149. See *id.* at 126.

150. See *id.* at 129. The court specifically discusses the potentially dangerous outcomes to employers such as creating uncertainty and making it more difficult for them to structure their own vacation packages according to their needs. *Id.* at 126.

151. *Lee*, 741 N.W.2d at 133 (Page, J., dissenting). Justice Page, in his dissent, interprets the contract to state that an employee earns the right to vacation pay throughout the career and that the notice provision is a condition subsequent to the earning of PTO. *Id.* This condition would allow an employer to divest earned wages from the employee and this would clearly be a violation of Minnesota Statutes section 181.13(a). *Id.* at 134.

152. *Id.* at 120 (emphasis added).

153. *Id.*; see also *id.* at 133 (Page, J., dissenting) (stating that the condition is a condition precedent to payment).

Paid Time Off (PTO).<sup>154</sup> This condition would divest an employee of wages that she had earned.<sup>155</sup> It would also provide a windfall for the employer and a disproportionate forfeiture for the employee. The employer would have had to pay these wages if it had been requested while the employee was still employed.<sup>156</sup>

### VIII. OTHER POSSIBLE SOLUTIONS

The Minnesota Supreme Court clearly failed to interpret the contract at issue in the *Lee* case within the confines of accepted practice.<sup>157</sup> The majority decided that it was more important to protect employers and ensure that there was no substantive right to vacation pay.<sup>158</sup> This decision, however, left Lee without any compensation for the PTO hours that she had saved during her employment. The court did not need to find a substantive right to vacation pay in order for Lee to receive her earned, but unused, PTO wages.

The court could have enabled payment to Lee of her earned but unused vacation pay without finding a substantive right to vacation pay. This contractual right does not have to be seen to be in direct conflict with a substantive right to vacation pay. The majority could have held Fresenius to its contract and stated that employers are held to the words they use in their contracts in all circumstances. This would uphold the contractual nature of vacation pay without creating a substantive right to vacation pay. If those words are unclear or ambiguous, then they are subject to contract interpretation. If those words are plain and clear, then an employer can keep those employees from earning the right to earn vacation time. This is the most simple outcome the majority could have determined, due entirely to the contractual nature of vacation pay. If vacation pay is purely a contractual matter, then employers may place any conditions on earning vacation pay. This is clearly

154. *Id.* at 120 (emphasis added).

155. *See id.* at 133 (Page, J., dissenting).

156. *See id.* at 135 n.1; *see also* RESTATEMENT (SECOND) OF CONTRACTS § 229 (1981) (stating that the court can excuse a condition that would result in disproportionate forfeiture).

157. *See supra* Part VII.

158. *See Lee*, 741 N.W.2d at 125. “Minnesota law does not provide for employee vacation time or pay as of right; rather, the law permits employers to choose whether to grant employees vacation benefits. When vacation benefits are granted, employers have considerable discretion in choosing how and whether to compensate employees for vacation time.” *Id.* at 126.

the outcome anticipated by the majority.<sup>159</sup>

#### A. *Estoppel*

There are other remedies beyond the most basic ones that have already been set forth. The majority made it clear that it considered the right of an employer to place favorable conditions on employees' rights to payment for vacation time to be greater than the employees' rights to be paid for wages that they have earned.<sup>160</sup> The court, however, could have placed a greater emphasis on employees' rights. Even if the court determined that the plain meaning of the contract allowed the conditions to keep Lee from earning a right to her vacation pay, the court could have put aside that condition to emphasize its protection of employees from burdensome and unfair employment contract provisions. Equitable estoppel allows a court to do just that.<sup>161</sup>

In order for a court to find equitable estoppel, it must find that even if a party has valid rights, it acted "in such a way as to induce another party to detrimentally rely on those actions."<sup>162</sup> In order for a party to take advantage of this doctrine, it must show that there were promises made, that the party reasonably relied on those promises, and that harm will occur without the action of the court.<sup>163</sup>

In *Lee v. Fresenius Medical Care, Inc.*, there was an implicit promise that an employee could indefinitely earn and accumulate vacation hours.<sup>164</sup> By allowing Lee to accumulate those hours with

159. *See id.* at 125.

160. *See id.* at 127.

161. *See* BALLENTINE'S LAW DICTIONARY 1007 (3d ed. 1969) ("promissory estoppel"). This is referred to as promissory estoppel, but the terms are often interchangeable. *See* Eric Mills Holmes, *Restatement of Promissory Estoppel*, 32 WILLAMETTE L. REV. 263, 284-85 (1996). Promissory estoppel usually applies to promises made outside of contracts and without consideration. *See* Constructors Supply Co. v. Bostrom Sheet Metal Works, Inc., 291 Minn. 113, 116-17, 190 N.W.2d 71, 74 (1971). Although promissory estoppel may not directly apply in the situation of an actual contract, courts often have great discretion in refusing to enforce contract terms it finds to be inequitable. *See* Twin City Bldg. & Loan Ass'n v. Johnson, 194 Minn. 1, 7, 259 N.W. 551, 553 (1935).

162. *Pollard v. Southdale Gardens of Edina Condo. Ass'n*, 698 N.W.2d 449, 454 (Minn. Ct. App. 2005) (quoting *Drake v. Reile's Transfer & Delivery, Inc.*, 613 N.W.2d 428, 434 (Minn. Ct. App. 2000)).

163. *Id.* (citing *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990)).

164. *See Lee*, 741 N.W.2d at 120.

the promise that she would be able to receive payment for them at any time, and knowing that she could be fired at any time for misconduct and thus would be ineligible for payment for those hours, Fresenius induced Lee to rely on that promise to her detriment.<sup>165</sup> The promise of payment was implicit in the employment contract, and it would be reasonable for an employee to assume that she would not be fired from her job before she could cash them in.<sup>166</sup> Without the court's action, Lee would lose payment for 181.86 hours of paid time off, which would amount to \$3,011.60.<sup>167</sup>

This course of action would require the courts to make an affirmative choice to place the needs of the employee over the desire of the employer to withhold benefits from terminated employees. The majority of the Minnesota Supreme Court, however, appears to place the employer's needs over those of the employees.<sup>168</sup> This is unfortunate, especially in economically difficult times, because an extra \$3,011.60 would be a great help to anyone.

#### *B. Disproportionate Forfeiture*

Beyond the nature of contracts allowing Lee to retain her PTO hours without creating a substantive right to vacation pay and equitable estoppel, there is another doctrine that would allow Lee to be paid. If the court continued to hold that the notice provision was a condition precedent to earning PTO and not a condition precedent for payment of earned but unused wages, then the court could still enable Lee to be paid. The court could use the disproportionate forfeiture doctrine. A court could excuse a party from a condition if it would "cause disproportionate forfeiture" so long as the condition was not a "material part of the agreed exchange."<sup>169</sup> Forfeiture requires a loss of a right to an exchange

165. *See id.*

166. *See id.* The reasonableness of Lee relying on her continued employment is undermined by the fact that she had six disciplinary actions within a period of a few months preceding her termination. *See id.*

167. *See id.* at 121.

168. *See supra* Part VII.

169. RESTATEMENT (SECOND) OF CONTRACTS § 229 (1981); *see also* Burger King Corp. v. Family Dining, Inc., 426 F. Supp. 485, 493 (E.D. Pa. 1977), *aff'd mem.*, 566 F.2d 1168 (3d Cir. 1977) (refusing to strictly enforce a contractual provision because it would amount to a forfeiture for one of the parties). Although this rule has not been directly applied to Minnesota by Minnesota courts, it has been



on the expectation of that exchange.<sup>170</sup> It is disproportionate if what is lost outweighs the risk from which the drafting party sought protection by the contract condition and the degree of protection that will be lost by excusing the condition.<sup>171</sup>

The application of this rule would be similar to that of equitable estoppel because it could be argued that Lee reasonably expected to be paid for her earned but unused vacation time, she lost her right to that exchange by failing to resign with notice, and the vacation pay provision was not a material part of her employment with Fresenius.<sup>172</sup> The balancing test which determines disproportionality falls within the discretion of the court.<sup>173</sup> The condition is aimed at protecting Fresenius from the risk of having to pay earned but unused vacation pay to employees that are terminated for misconduct.<sup>174</sup> This protection would clearly be lost if the court decided that this condition should not be enforced. Since this determination falls within the discretion of the court, and the majority of the Minnesota Supreme Court clearly holds that employer's rights are greater than those of employees, this final solution would probably fail.<sup>175</sup>

## IX. CONCLUSION

The goal of the majority is apparent: they sought to avoid creating a substantive right to vacation pay while protecting employers' ability to impose favorable contracts on employees. When the plain meaning of words impedes one's goal, one must make a decision to either abide by that meaning or find some way around it. In *Lee v. Fresenius Medical Care, Inc.*, the Minnesota Supreme Court decided on the latter.<sup>176</sup>

The *Lee* case appears on its face to be a simple discussion of earned but unpaid vacation hours and the mandate of Minnesota Statutes section 181.13(a) that employers pay unpaid wages to

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extensively discussed by federal courts relating to Minnesota cases. See *Video Update, Inc. v. Videoland, Inc.*, 182 F.3d 659, 664 (8th Cir. 1999); *American Ins. Co. v. C.S. McCrossan, Inc.*, 829 F.2d 702, 705 (8th Cir. 1987).

170. RESTATEMENT (SECOND) OF CONTRACTS § 229 cmt. b (1981).

171. *Id.*

172. See *supra* Part VIII.A.

173. See *American Ins. Co.*, 829 F.2d at 705.

174. See *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 120 (Minn. 2007).

175. See *supra* Part VII.

176. See *Lee*, 741 N.W.2d at 130.

terminated employees.<sup>177</sup> The discharged employee made a demand for payment of earned but unused vacation pay, but the employer refused.<sup>178</sup> The Minnesota Supreme Court decided that vacation pay was to be considered the same as wages under the statute, but the employee was not entitled to payment.<sup>179</sup>

The court determined that the right to vacation pay under common law is entirely contractual and employers have the right to dictate any terms on which an employee earns paid time off.<sup>180</sup> The court, however, failed to use any tools of contract interpretation to determine the meaning of the words present in the contract.<sup>181</sup> Instead, it interpreted the contract in an effort to achieve the goals of avoiding the creation of a substantive right to vacation pay and protecting the interests of employers.<sup>182</sup> If the court had upheld the contractual nature of vacation pay through interpretation, it could have avoided creating an absolute right to vacation pay while maintaining the intent behind section 181.13(a).

Vacation pay in Minnesota has long been held to be a creature of contracts.<sup>183</sup> The words in the contract at issue in *Lee* were the great foe of the reality sought by the majority. These words are unambiguous and they should have been given their plain and ordinary meaning even if it led to an undesirable result.<sup>184</sup> The court could have still achieved its goals without blatantly disregarding common law contract interpretation. If it held Fresenius accountable for the language in its own contract, then it would send a message to employers to be more careful in the way they craft their employee handbooks. Words do not need to be the enemy and can be used to achieve just ends, even if that has been forgotten by the Minnesota Supreme Court.

177. MINN. STAT. § 181.13(a) (2006). The statute requires employers to pay discharged employees the “earned and unpaid” wages within twenty-four hours of a demand. *Id.*

178. *Lee*, 741 N.W.2d at 121.

179. *Id.* at 130.

180. *See id.* at 126.

181. *See id.*

182. *See id.* at 129–30.

183. *See id.* at 123; *Tynan v. KSTP, Inc.*, 247 Minn. 168, 178, 77 N.W.2d 200, 206 (1956); *Edelstein v. Duluth, M. & I. Range Ry. Co.*, 225 Minn. 508, 522, 31 N.W.2d 465, 473 (1948); *Brown v. Tonka Corp.*, 519 N.W.2d 474, 475 (Minn. Ct. App. 1994).

184. *See Bank Midwest v. Lipetzky*, 674 N.W.2d 176, 179 (Minn. 2004) (quoting *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346–47 (Minn. 2003)).